

1 The Honorable Richard A. Jones  
2 The Honorable James P. Donohue  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 KYLE LYDELL CANTY, )  
10 vs. ) Plaintiff, ) No. 2:16-cv-01655-RAJ-JPD  
11 CITY OF SEATTLE, et. al., ) ) KING COUNTY DEFENDANTS'  
12 ) ) RESPONSE TO PLAINTIFF'S  
13 Defendants. ) ) MOTION PURSUANT TO 42 CFR  
 ) ) §2.23 (DKT. 119)  
 ) ) Noted: October 6, 2017  
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**I. RELIEF REQUESTED**

15 Defendants King County, Gail Bonicalzi, and Melinda Hasegawa (King County  
16 Defendants) request the Court deny Plaintiff's Motion Pursuant to 42 CFR §2.23 (Dkt. 119).

17 **II. FACTS RELEVANT TO MOTION**

18 Plaintiff has filed an amended civil right complaint naming King County and Designated  
19 Mental Health Providers Gail Bonicalzi and Melinda Hasegawa. (Dkt. 38). Plaintiff alleges that  
20 King County Defendants violated his rights under the Fourth, Fifth and Eighth Amendments by  
21 having him civilly committed at Harborview Medical Center for 72 hours. (Dkt. 38).

22 **III. ARGUMENT**

23 Plaintiff Canty apparently seeks an apology and monetary damages from all defendants  
for an alleged violation of 42 CFR §2.23 as well as an order directing defendants to not gain  
illegal access to Plaintiff's medical records. Plaintiff Canty's motion is without merit for a

KING COUNTY DEFENDANTS' RESPONSE TO  
PLAINTIFF'S MOTION PURSUANT TO 42 CFR 2.23  
(16-cv-01655-RAJ-JPD) - 1

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION, Litigation Section  
900 King County Administration Building  
500 Fourth Avenue  
Seattle, Washington 98104  
(206) 296-0430 Fax (206) 296-8819

1 multitude of reasons. First, 42 CFR §2.23 does not apply to any of the defendants in this case as  
 2 none of the defendants are “part 2 programs” that provide substance use diagnosis, treatment or  
 3 referral for treatment under 42 CFR §2.11. Second, this statute does not prohibit defendants  
 4 from obtaining mental health records, rather it allows for a patient to get access to their own  
 5 substance abuse records. Third, this statute does not authorize a cause of action or remedy for an  
 6 alleged violation for a third party obtaining records. Finally, as explained in the Fourth  
 7 Declaration of Kanner (Dkt. 124, ¶3), the only access to Plaintiff’s medical records that King  
 8 County Defendants and their counsel have are those that are a part of the Designated Mental  
 9 Health Provider’s files and were created or used in the determination of his commitment under  
 10 the Involuntary Treatment Act. There is nothing improper or untoward about King County  
 11 Defendants sharing the records from a detention that is the subject of the suit with the attorney  
 12 defending them in said suit. As such Plaintiff’s motion is frivolously made and should be denied  
 13 in whole.

#### IV. CONCLUSION

14 For the foregoing reasons, King County Defendants request that Plaintiff’s motion be  
 15 denied.

16 DATED this 29<sup>th</sup> day of September, 2017.

17 DANIEL T. SATTERBERG  
 18 King County Prosecuting Attorney

19 By: /s/ Samantha D. Kanner  
 20 SAMANTHA D. KANNER, WSBA #36943  
 21 Senior Deputy Prosecuting Attorney  
 22 Attorneys for King County Defendants  
 23 500 Fourth Avenue, 9<sup>th</sup> Floor  
 Seattle, WA 98104  
 Telephone: (206) 296-8820  
 E-Mail: [Samantha.Kanner@kingcounty.gov](mailto:Samantha.Kanner@kingcounty.gov)

## **CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on September 29, 2017, I electronically filed the foregoing document(s) along with the Proposed Order Denying Plaintiff's Motion with the Clerk of the Court using the CM/ECF E-Filing System, thus electronically serving counsel for City of Seattle Defendants, and notifying of such filing to the following:

**Kyle Lydell Cantly  
DOC #401358  
Washington Corrections Center  
P.O. Box 900  
Shelton, WA 98584**

I certify under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 29<sup>th</sup> day of September, 2017.

/s/Lindsey Macalalad  
LINDSEY MACALALAD  
Legal Secretary